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# Supreme Court of the United States

OCTOBER TERM, 1952

No. 687

JULIUS ROSENBERG and ETHEL ROSENBERG,

*Petitioners,*

vs.

UNITED STATES OF AMERICA.

## SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR REHEARING

JOHN F. FINERTY,
*Attorney for Petitioners.*

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There would seem to be only one rational explanation for the denial by the majority of the Court of the petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit. What this explanation may be can only be deduced by the elimination of grounds for denial which, it would seem cannot be reasonably imputed to the majority.

Counsel will not impugn the intelligence of any member of the majority of this Court by assuming that any member could possibly accept as true the fantastic and inherently incredible testimony of Government's witness David Greenglass that, in September, 1945, he was able to furnish and transmit to the defendant Julius Rosenberg a substantially accurate drawing of a cross-section of the Nagasaki atom bomb, together with twelve pages of written material descriptive of its component elements, their action and inter-action, and the principles of operation of that bomb; and further, that five years later he was able to produce, wholly from memory and without aid from any other source, as impounded Government Exhibit

8, a substantial replica of such drawing of a cross-section of the Nagasaki atom bomb, and a paraphrase of such descriptive material as represented by Greenglass' untranscribed testimony.[1]

Neither will counsel imply such disrespect to any member of the majority of this Court as to suggest that any member had not read at least the resume of Greenglass' testimony in the foregoing respects presented in the petition for certiorari.[2]

Furthermore, counsel will not impute to any member of the majority of this Court the rejection of the truth of the affidavits of Dr. Kaiser, now a member of the British

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[1] While Greenglass' testimony with relation either to the alleged original production by him of the drawings of the *lens molds*, or their reproduction as represented by Government's Exhibits 2, 6 and 7, is not as inherently incredible as is his testimony as to Government Exhibit 8, the cross-section of the Nagasaki atom bomb and the untranscribed descriptive material relating thereto, it has already been noted that, had the jury known this latter testimony to be perjured, they undoubtedly must have considered Greenglass' entire testimony impeached.

It will also be noted that the hysterically proclaimed "crime worse than murder", on the basis of which the trial judge undertook to justify the death sentences which he imposed upon the Rosenbergs (C. R. 1614), was a crime for which the Rosenbergs were never indicted, tried or convicted—the actual transmission to the Soviet of the secrets of the atom bomb as comprised by impounded Government Exhibit 8 and Greenglass' untranscribed descriptive material relating thereto. There is not the slightest indication that even that Judge would have imposed such sentences for the mere transmittal to the Soviet Union of drawings of a minor portion of that bomb, the lens molds, as comprised by Exhibits 2, 6 and 7, aside from the fact that, again, the Rosenbergs were never indicted, tried or convicted for the actual transmittal of any such material.

[2] For the convenience of the Court, counsel has re-abstracted Greenglass' testimony in the foregoing respects in the Appendix to this supplemental brief. It will be noted that the nature of this perjured testimony is such that it could not have been innocently used by the prosecutor. Counsel respectfully suggests that after reading such testimony of Greenglass, no member of the majority could have the temerity to avow belief in its truth.

Atomic Commission (R. 119-121)* and of Dr. Hadamard, a distinguished French atomic scientist (R. 121-123), that it is inconceivable that Greenglass, with his total lack of scientific training and of opportunity to have obtained the necessary information, could have originally produced, in September, 1945, a cross-section of the Nagasaki atom bomb and twelve pages of such descriptive material, and five years later to have reproduced them on trial, wholly from memory and without aid from any other source, in impounded Government Exhibit 8 and in Greenglass' untranscribed testimony relating thereto. To do so would impute to the members of the majority of this Court the acceptance of the wholly fallacious and spurious grounds which the District Attorney succeeded in imposing upon the District Court as its basis for rejecting the truth of such affidavits.

These grounds were, that since the affiants had not observed Greenglass when he testified, and had seen neither impounded Government Exhibit 8 nor Greenglass' untranscribed testimony relating thereto, they were not qualified to form an opinion as to Greenglass' memory (R. 18). As pointed out pages 2-3 of defendants' reply to the Government's brief in opposition, the fundamental basis of those affidavits was Greenglass' lack of scientific capacity, and not of memory. It was obviously unnecessary for atomic scientists, of the standing of the affiants, either to have heard Greenglass' untranscribed testimony or to have seen impounded Government Exhibit 8, in order to know that Greenglass lacked the scientific capacity to have originally produced, or later to have reproduced, either without aid from other and undisclosed sources.

Neither is counsel willing to assume that any member of the majority can believe that the question of Greenglass'

* The designation (R. .....) refers to the transcript of record herein. Where the designation (C. R. .....) is used, it refers to the transcript of record in the criminal proceedings before this Court on the original petition for certiorari in Docket 111, October Term 1951.

perjury was concluded by the verdict of the jury, by the affirmance of that verdict by the Circuit Court of Appeals, and by the original denial of certiorari by this Court. No such question was or could have been presented either to the jury or to the courts on review. Any question even of the credibility of Greenglass' testimony in this respect was excluded from the jury by the refusal by the Trial Court to permit Government's atomic witness Colonel Derry to express an opinion as to the credibility of such testimony (C. R. 916).[3]

Finally, in this connection, counsel would not impute to any member of the majority of this Court a lack of recognition of the significance of the Government's failure to offer any affidavits in rebuttal of the affidavits of Dr. Kaiser and Dr. Hadamard with reference to Exhibit 8 and Greenglass' untranscribed testimony relating thereto, although the Government had available to it, as shown by its submitted list of witnesses on trial (C. R. 51-52), the three leading atomic scientists of this country: Dr. Harold C. Urey, Dr. George B. Kistiakowski, and Dr. J. Robert Oppenheimer. Plainly the Government knew that these atomic scientists could not be brought to deny the truth of the affidavits of their fellow scientists, Dr. Kaiser and Dr. Hadamard.

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[3] It is to be noted that the opinion of the Circuit Court of Appeals rejects the affidavits, not only upon the fallacious grounds on which they were rejected by the District Court, but specifically on the ground that "the affidavits bear solely upon the credibility of his (Greenglass') testimony and that issue was properly submitted to the Trial Jury for decision (R. 36). It has, however, been repeatedly noted, both in the petition for certiorari and in the defendants' reply to the Government's brief in opposition, that opinion of the Circuit Court of Appeals undeniably shows that, incredible as it may seem, *that Court did not even know that any question of perjury as to Exhibit 8, the cross-section of the Nagasaki atom bomb,* and Greenglass' untranscribed testimony relating thereto, *was presented by defendants' Section 2255 petition,* but clearly assumed that the only questions of perjury presented were as to Greenglass' perjury in connection with Exhibits 2, 6 and 7, the drawings of the lens molds (R. 335-336).

Under such circumstances it would seem fair to deduce only that the majority are, on some undisclosed and possibly unreasoned grounds, sincerely convinced that even if Greenglass' testimony in the foregoing respects is perjured, the Rosenbergs are, nevertheless, guilty.[4] Therefore, the majority may well believe that certiorari should not be granted, since this would result not only, from their point of view, in useless open argument before this Court of the question of Greenglass' perjury, but, if followed by public hearings on retrial, might involve, likewise from their point of view, useless disclosures, which nevertheless might shake the confidence of the people of the United States and of the world in the administration of justice in this country. Patriotic as may be the motives of the majority in this respect, the preservation of Government prestige at the expense of the rights, and here, of the very lives of accused persons, is more consistent with the principles of totalitarian than of democratic society.

If counsel wrong the majority in this respect, the blame lies with the majority in refusing to apply to the Federal Courts the sound and historic principles laid down by this Court for the governance of state courts in the treatment of perjury (*Mooney* v. *Holohan*, 294 U. S. 103).[5]

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[4] In this connection it is to be noted that the Court of Appeals, in its original opinion confirming the conviction of the Rosenbergs, expressly held that the conviction of the Rosenbergs could not stand if Greenglass' testimony were disregarded (C. R. 1648).

[5] It seems doctrinaire in the extreme for Mr. Justice Frankfurter to suggest in his notation in connection with the denial of the original petition for certiorari, and to repeat that suggestion here, that the only significance of such denial is that petitioners could not muster four votes in favor of granting the Writ. The practical significance of the denial here is to take the lives of the petitioners on perjured testimony.

Moreover, it is to be noted that the rigid adherence to the "four vote rule" stultifies the representations originally made by the late Mr. Justice Vandevanter to the Congress in 1924 as to the liberality which which the Court would exercise its discretion in issuing certiorari in death cases, such representations being repeated by the late Mr. Chief Justice Hughes to the Congress in 1937. (See Coun-

Counsel, for his part, believes that nothing could better serve to restore universal confidence in this country's administration of justice than the courageous exposure and rebuke by this Court of the shameful maladministration of justice by the District Attorney, by the Department of Justice, and by the lower courts, which has attended the whole course of the prosecution of the Rosenbergs.[6]

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sel's brief of November 7, 1938 in support of petition for rehearing in *Thomas J. Mooney* v. *Court W. Smith*, Warden of San Quentin Penitentiary, California, No. 6, October Term, 1938, pp. 1 to 24.) While such brief specifically concerns review of judgment of state courts, the representations of the Court to the Congress were not so confined.

Finally, it is inconceivable that Mr. Justice Frankfurter can consider his observations in connection with denial of the Rosenbergs' original petition for certiorari, as to the care with which the Court of Appeals scrutinized that record, to have any application to the denial of their present petitions. One and, indeed, the primary ground of the instant petitions for certiorari is the shocking negligence of the Court of Appeals in failing to examine the Section 2255 record sufficiently to understand that even such petition, and the affidavits attached thereto, alleged any perjury whatever in Greenglass' testimony with reference to impounded Government Exhibit 8, the cross-section of the Nagasaki atom bomb, and Greenglass' untranscribed testimony relating to that exhibit. (See pp. 35-38 of the instant petitions for certiorari, and pp. 1-3 of petitioners' reply brief to the Government's brief in opposition.)

[6] This maladministration has reached even into the recent clemency proceedings before the President. The Trial Judge expressly conditioned the original stay of execution of the Rosenbergs on the condition they would not use such stay to seek further judicial review of their conviction. Thereupon, counsel signing this supplemental brief, who had not yet become counsel for the Rosenbergs, advised the Deputy Attorney General of the facts as to Greenglass' perjury, as shown by Greenglass' own testimony and the affidavits of Dr. Kaiser and Dr. Hadamard. Counsel further warned the Deputy Attorney General that the President should not be embarrassed by prematurely passing, one way or another, on such application for clemency, since further judicial remedies were available. The Deputy Attorney General curtly rejected counsel's representations in the foregoing respects, and counsel is informed that the President passed upon the original application for clemency without the information furnished by counsel to the Deputy Attorney General being made available to him.

Whether or not this Court is aware of it, confidence in the administration of justice by the Department of Justice and the Federal courts in cases of this nature is already badly shaken both at home and abroad. Even the Court of Appeals rebuked the Department of Justice as represented by the District Attorney in "timing" the Perl indictment so as to influence the jury upon the trial of the Rosenbergs (R. 334). It is not without significance that the Department of Justice has so far lost all sense of propriety that it permitted the District Attorney to bring on the trial of Perl upon such indictment at the very time that these petitions for certiorari were pending before this Court, although the District Attorney had resisted Perl's repeated efforts to bring the case to trial during the two preceding years. Counsel does not mean to suggest that the "timing" of Perl's trial in any way influenced this Court in its disposition of the Rosenbergs' present petitions for certiorari. Any prosecutor should have been on guard against any act which might have been susceptible of the implication that such influence was intended.

If this Court permits this and worse improprieties by the Department of Justice in the Rosenbergs' case to pass unrebuked, and if the majority persist in their determination not to permit review in open court of whether or not Greenglass' testimony was perjured, this Court will have only itself to blame if "justice under the law" becomes a term of derision.

Finally, if the Rosenbergs are permitted to be executed while the slightest doubt of the truth of Greenglass' testimony persists, and until the truth or falsity of that testimony is fairly determined in open court, this Court will have done greater and more lasting disservice to this country than could the Rosenbergs, had they in fact committed the "crime worse than murder" for which they have been sentenced to death, and of which they are unquestionably innocent—the actual transmission to the Soviet of the secret of the atom bomb.

Counsel signing this supplemental brief in support of the petition for rehearing has prepared it while his fellow counsel has been engaged in preparing the petition itself, and in certain phases of other proceedings on behalf of the Rosenbergs. This supplemental brief is, however, submitted with his full authority and approval.

Respectfully submitted,

JOHN F. FINERTY,
Attorney for Petitioners.

## APPENDIX

### Summary Analysis of Greenglass' Perjury in His Testimony in Connection with Impounded Government Exhibit 8, a Sketch of a Cross-Section of the Nagasaki Atom Bomb and His Untranscribed Testimony Descriptive of That Exhibit

Greenglass testified (C. R. 395)[1] that he was born on March 3, 1922, presumably in New York. That after graduation from high school he attended Brooklyn Polytechnic for six months and later Pratt Institute for a semester and a half to prepare himself to be a machinist. These were his sole educational qualifications shown on direct examination (C. R. 396).

On cross-examination he admitted (C. R. 610-611) that he had failed in all eight courses at Brooklyn Polytechnic, but stated, with apparent pride, that he did not fail any courses at Pratt Institute but got good marks. He also admitted (C. R. 612) that he never studied engineering, differential or advanced calculus, thermodynamics, nuclear or atomic physics, or quantum mechanics. In answer to the question whether he knew anything about the basic theory of atomic energy, he answered, "I know something about it, yes, I am no scientific expert, but I know something about it." He did not further define what he did know about "it".

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[1] The incredible confusion and diffusion with which Greenglass' testimony was presented by the prosecutor makes it impractical within the necessary limitations of a petition for certiorari to furnish record citation for all the statements made in this summary of Greenglass' testimony. Such citations are, therefore, necessarily limited to the most vital items of that testimony. Counsel, however, give their assurance to this Court that such summary is a fair representation of Greenglass' testimony.

Counsel believe, moreover, that an examination of the record would demonstrate that the confused manner in which Greenglass' testimony was presented was a device deliberately adopted by the prosecutor to conceal the inherent improbability of that testimony, and that such device was most successful.

This is the sum total of Greenglass' educational qualifications as shown of record.

Greenglass testified that prior to entering the Army in 1943, he had practical experience as a machinist. That, after basic training, he was first assigned to the Ordnance School at Aberdeen, Maryland, as a machinist (C. R. 396). That after service at various other posts, he was assigned, in July, 1944, to the Manhattan District Project at Oak Ridge, Tennessee, for two weeks' orientation. That his orientation consisted of his being told that it was a secret project, but he was not told, and did not know, what "the secret" was (C. R. 397). That in August, 1944 he was assigned to the Manhattan Project at Los Alamos (C. R. 398). The keenness of his observation is illustrated by his testimony that not until his wife visited him on November 29, 1944, during a furlough to Albuquerque, did he even know that the project was concerned with the construction of the atom bomb. That he learned this only when his wife told him that Julius Rosenberg had told her—

> "* * * that I was working on the atomic bomb; that was the first I knew of it" (C. R. 399).

Neither he nor his wife testified as to how Julius Rosenberg obtained this information.

He testified that on his wife's visit, she immediately told him that Julius and Ethel Rosenberg wanted him to give information to the Russians. That at first he refused, but after thinking it over until the next morning, he agreed (C. R. 424-425). On cross-examination he stated that he agreed after—

> "I consulted with the memories and voices of my mind" (C. R. 539).

He testified that after his agreement he gave his wife information to memorize, but not to write out, "as to the layout of the Los Alamos atomic project, the buildings, number of people, and stuff like that", and the names of

certain scientists working there, specifying only Oppenheimer, Kistiakowski and Bohr (C. R. 426).

Right here is an example of the "phoniness" of Greenglass' testimony. Assuming he was not "covering up" when he testified that he did not know that the "project" he was working on at Los Alamos was the atomic bomb, until his wife told him that Rosenberg had told her that that was what Greenglass was working on, several questions suggest themselves in connection with Greenglass' testimony at this point. For instance: in what manner was Greenglass, nevertheless, enabled immediately to give his wife information "as to the layout of Los Alamos atomic project, the building, number of people, and stuff like that"? And what kind of useful information as to the layout and buildings was it that his wife could offhand memorize? Did he draw for her, or orally describe, the layout of the Los Alamos atomic project and the buildings? If so, how was he suddenly enabled to say that, "though I have seen these buildings every day for four months I suddenly realize that such a building holds the cyclotron; that another holds the crude uranium; another holds the heavy water; another holds the atomic pile; and each is of such and such an exterior and interior design; and that such and such is their relative location." Further, how, out of the thousands of men employed here, did he suddenly come to realize that one of them was Oppenheimer and one, Kistiakowski, and another, Bohr, and that they were leading atomic scientists? Or did he previously know who and what they were, and simply couldn't imagine what such people could be doing at Los Alamos, until Greenglass was told that Rosenberg said that Greenglass, himself, was working there on the atomic bomb? Or did he dash out and ask someone for all this information, and if so, whom?

Greenglass then testified that on January 1, 1945 he arrived in New York on a fifteen day furlough. That one morning shortly after his arrival, Julius Rosenberg came to Greenglass' house and asked him to write down any in-

formation he had as to the atomic bomb and as to scientists working on it, he having told Rosenberg he was working in connection with Dr. Kistiakowski on the H. E. (high explosive) lens mold. That, accordingly, he made a sketch of a lens mold for Rosenberg and on a separate sheet of paper a description of it, and the next morning gave both to Rosenberg together with a list of scientists (C. R. 428-429). He then testified that Government Exhibit 2 was a replica of such sketch of a lens mold and of the accompanying descriptive sheet of paper and that he had prepared this exhibit "during this trial, yesterday" (C. R. 439-440).[2]

Greenglass then proceeded to make the amazing statement that after he had given Rosenberg the alleged original of Government Exhibit 2, *Rosenberg* gave *him* an oral description of what Greenglass testified—

> "I later found out to be the bomb that was dropped at Hiroshima" (C. R. 491-493).

The prosecutor then asked Greenglass the following question and received the following reply (C. R. 493):

> Q. Could you tell us, as you remember in exactly what words Rosenberg described this type of atom bomb to you? A. He said there was fissionable material at one end of a cube and at the other end of the cube there was a sliding member that was also of fissionable material and when they brought these two together under great pressure, that would be—a nuclear reaction would take place. That is the type of bomb he described.

Nowhere in Greenglass' testimony, nor otherwise in the record, is there the slightest intimation as to how Rosenberg could have gotten a description of the Hiroshima atom bomb approximately six months before that bomb was

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[2] Greenglass' perjury in connection with Government Exhibit 2, as well as in connection with Government Exhibits 6 and 7, two other purported reproductions of sketches of lens molds and descriptive material he allegedly gave to Harry Gold in Los Alamos in June, 1945, will not be discussed here.

exploded at Hiroshima on August 6, 1945 (C. R. 890) and over four months before the first test atomic bomb was exploded at Los Alamos on July 16, 1945 (C. R. 907-908). Nowhere is there any testimony that Rosenberg was ever at Los Alamos or had any other source of information there than Greenglass or if he did, why he should depend on so unqualified a source as Greenglass.

Greenglass then testified that Rosenberg gave him the foregoing so-called "description" of the Hiroshima atom bomb so that Greenglass, on his return to Los Alamos from his furlough, "should know what to look for."

The prosecutor then asked Greenglass the following question and received the following answers:

> Q. After he gave you that description, the Hiroshima type, did you, in ensuing months, gather information concerning the atom bomb? A. I did.
>
> Q. Will you tell us just how you went about that? A. I would usually have access to other points in the project and also I was friendly with a number of people in various parts of the project and whenever a conversation would take place on something I didn't know about I would listen very avidly and question * * * the speakers to clarify what they had said. I would do this surreptitiously so that they wouldn't * * * I would do it so they wouldn't know.
>
> * * * * * * *
>
> Q. Now, in addition to that fact, you yourself were working on various things used in connection with the experimentation used on the atom bomb? A. That is correct.
>
> Q. Such as this high explosive lens? A. High explosive lens molds were made in my shop and I got—as a matter of fact, there were molds used on the atom bomb.
>
> Q. Was it on the basis of this knowledge which you had accumulated over those months that you told Rosenberg you thought you had a pretty good description of the atom bomb itself? A. I did.

Q. Did you at a later time, give to Rosenberg a description of the atom bomb itself? A. I did (C. R. 494-495).

NOTE: Asterisks in the foregoing quotation represent mere objections or argument between counsel and not omission of any testimony.

Believe it or not, this is the sum total of the prosecutor's direct examination of Greenglass and of Greenglass' testimony as to how between his return to Los Alamos in February, 1945, and his next furlough in New York City in September, 1945, Greenglass, a machinist without any scientific training whatsoever, was able to obtain the highly technical and top secret information which allegedly made it possible for him on his return to New York in September, 1945, to draw for Rosenberg a sketch of a cross-section of the Nagasaki atom bomb, and to write out for him twelve pages of material descriptive of its component elements, their action and interaction and the principles of operation of the bomb itself.

Moreover, cross-examination (C. R. 620-628) failed to disclose the names of any persons at Los Alamos with whom he conversed or whose conversations he overheard except that of a GI named Spindel, whose information was confined to the fact that a man known as Baker at Los Alamos was actually the atomic scientist Bohr (C. R. 620).

Cross-examination also failed to develop any details of such conversations had or overheard, except two puerile and meaningless examples (C. R. 624). Greenglass did testify that he had seen blueprints of the lens molds on which he worked, but that he never had taken any blueprint from the shop (C. R. 617-626). There was no testimony by him that he had ever seen a blueprint of a cross-section of the atom bomb.

Indeed, Greenglass' testimony as to the system of white, red and blue badges used for security purposes at Los Alamos (C. R. 408-409; 618-619) showed that as a wearer

of a blue or red badge he could have had no opportunity of obtaining any more definite information as to the atom bomb itself, as distinguished from the lens mold on which he worked, than the wholly negligible information indicated by his testimony. This is, moreover, confirmed by the testimony of Government witness Colonel Lansdale, Security Officer for the Manhattan Project, as to the stringent security measures in effect at Los Alamos (C. R. 879-889. See particularly C. R. 888-889). Nevertheless, as has been seen, it was solely on the basis of the "information" thus obtained by Greenglass between his return to Los Alamos and his next furlough in New York in September, 1945, that he allegedly was able to tell Rosenberg, who came to see him at his house the morning after his return, that "I think I have a pretty good description of the atom bomb." Rosenberg then said he wanted Greenglass to write up such description immediately and he gave Greenglass $200 (C. R. 490, 495-496).[3]

Greenglass then testified (C. R. 497-498) that thereupon his wife and he had a combination breakfast-lunch, and he then drew a sketch of a cross-section of the Nagasaki atom bomb and wrote out twelve pages of the descriptive material already referred to, which he completed about two o'clock that same afternoon and that he and his wife immediately delivered the sketches and material to Rosenberg at his house.[4]

Greenglass then testified (C. R. 509-513) that Rosenberg said, "This is very good. We ought to have it typed immediately." That thereupon Mrs. Rosenberg did the typ-

[3] The intentional confusion with which Greenglass' testimony in this respect was presented by the prosecutor is well illustrated in the pages intervening between these citations.

[4] At this point a long argument ensued between the Court and various counsel (C. R. 499-510) as a result of which, on motion of defendants' own counsel Government Exhibit 8 was impounded and the stenographer was ultimately directed not to transcribe Greenglass' testimony paraphrasing the twelve pages of descriptive material relating to Exhibit 8 (C. R. 904).

ing, and she, Julius and Mrs. Greenglass corrected the grammar; that it took until about five in the afternoon to complete the typing, and that Rosenberg then took Greenglass' original notes, burned them in a frying-pan and flushed them down the drain (C. R. 514).

There is no precise testimony by Greenglass as to how he was able to produce Exhibit 8 and a paraphrase of the twelve pages of descriptive material relating thereto during the trial, some five years after he allegedly had given the original to Rosenberg in New York in September, 1945, except his answer to a general question asked by the Court (C. R. 611):

> "Let me ask you: these sketches are in evidence, are they the products of your own mind? By that I mean, were you helped by anybody on the outside in drawing those sketches? A. Nobody else, just myself."

This question is broad enough to include Exhibit 8. Other questions as to whether he produced Exhibits 2, 6 and 7, sketches of the lens molds, wholly from memory, and his answer that he did, do not specifically include Exhibit 8 (See C. R. 609; also C. R. 626-627, which may be intended to refer to Exhibit 8, but particularly refers only to Exhibits 2, 6 and 7).

It is submitted that the foregoing analysis of Greenglass' testimony demonstrates that no one, with an I. Q. rating above that of a moron, could fail to recognize that such testimony was inherently incredible. The trouble is that neither on the original trial, nor on the original appeal, nor on the Section 2255 proceedings before the Court of Appeals or earlier before the District Court, has any such analysis been made. Instead, such testimony was permitted by both the Trial Judge and counsel to go before the jury without any such analysis, and in the same undigested and incredible confusion in which it was deliberately presented by the prosecutor.

Moreover, the Trial Judge himself, as will now be shown, precluded defendants' counsel from a potential opportunity

to put before the jury, out of the mouth of the Government's own atomic witness, Colonel Derry, evidence of Greenglass' total lack of capacity to give such testimony.

After Colonel Derry, the liaison officer for General Groves, had been called as an atomic expert and had testified that impounded Government Exhibit 8, which was shown to him, and Greenglass' untranscribed testimony, which was read to him, constituted, respectively, a substantially accurate cross-section of the Nagasaki atom bomb and a substantially accurate description of its component elements and principles of operation (C. R. 914-916), defendants' counsel Mr. Bloch asked him the following questions, with the following absurd ruling by the Court which was heartily supported by the prosecutor, Mr. Saypol (C. R. 916):

> Q. Would you say as a scientist, a graduate engineer who has received college courses and received a degree in engineering, and had the experience you have detailed to us here, that a machinist without any degree in engineering or any scientist (science) would be able to describe accurately the functions of the atom bomb and its component parts——
>
> The Court: Objection sustained.
>
> Q. Both in relation——
>
> Mr. E. H. Bloch: May I finish it?
>
> The Court: Yes.
>
> Q. Both in relation to their independent functions and to their inter-related functions?
>
> The Court: Objection sustained.
>
> Mr. Saypol: I would like the record to show that it is the jury who will judge from Greenglass' testimony; not this witness.
>
> The Court: Yes, we have had a bit of summation right now so we will take that out of the final summation.
>
> Mr. E. H. Bloch: It wasn't intended as summation, your Honor. That is all.

Obviously Mr. Bloch's question was not summation. It was a proper question to direct to an expert atomic witness of the Government itself as to Greenglass' educational capacity to produce the original of Government Exhibit 8 and Greenglass' untranscribed paraphrase of the 12 pages descriptive material relating to that exhibit. The reasonable effect upon the jury was to remove any doubt of Greenglass' capacity in this respect and therefore of the truth of Greenglass' testimony. Though the Court stated the credibility of such testimony was left to the jury, the jury was left without any guidance to the consideration of such credibility, or any real occasion to consider it. This was particularly so because in the Trial Judge's instructions to the jury he did not do, as was his right and duty to do, had he really understood such testimony, to caution the jury as to the possible incredibility of such testimony. The jury's verdict, therefore, cannot reasonably be assumed to have affirmed the credibility of such testimony and, even if it was so intended, could not be presumed to make the incredible, credible.

Moreover, the Trial Judge's ruling could not have been assigned on appeal as reversible error, since no one could say what Colonel Derry's answer would have been, and whether, therefore, the Court's ruling preventing that answer was merely harmless error so far as defendants were concerned.

This ruling of the Trial Judge preventing Colonel Derry from answering a question of defense counsel on cross-examination is to be distinguished in principle from the situation which would have resulted had the Trial Judge prevented such question by defense counsel to a defense witness on direct examination. In the latter event, it is to be presumed that defense counsel would not have asked the question without knowing that his witness would have given a favorable answer, and could therefore have made an offer of proof that such answer would be favorable, thus precluding the possibility that the Trial Judge by preventing such answer committed merely harmless error.

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## APPENDIX TO PETITION

### "The Scientific Techniques and Theorems for Study and Evaluation of Pre-Trial Publicity as Producing Community Prejudgment."

*Introduction*

In application to vacate the sentence it was claimed by the petitioners that the publicity in the press and radio before and during the trial was of such an order as to make it impossible for the jury to render an impartial verdict. It was maintained that the attitudes of the community, and therefore of the jurors who are members of the community, must have been affected by the material in the mass media. In order to support this contention the petitioners assembled the pertinent newspaper material on the case, and on the issues which inhered in it, and claimed that both by virtue of its volume and its content, community-wide attitudes hostile to the defendants were created. That this and much more material exists, in not only newspapers but in other communication forms, as in periodical literature, as in radio and television script material, etc., has not been disputed.

An offer of proof was made of testimony from an "expert in the area of mass psychology and mass psychological reaction with respect to the effect upon the public of the voluminous pre-trial publicity which preceded the trial of these petitioners" (R. 242). The offer was rejected. The Court of Appeals approved the refusal "to grant a hearing to receive such opinion evidence" (R. 332-3). Since neither court gave grounds for such a ruling, it must be assumed that the ground was that a judge is sufficiently expert to draw his conclusions unassisted, or that the subject is not one within the area of an established science, and hence such testimony is not admissible under the opinion rule. The purpose of this Appendix is to demonstrate the complete absence of validity of such assumed grounds, and to show how scientific study and analysis, as a subdivision of the field commonly referred to as "social psychology", is necessarily appropriate on issues such as that involved here.

The following documentation is believed to demonstrate the existence of scientific tools and theorems, which are of crucial importance, and which must be taken into account, when tendered, as evidence claimed to show that "publicity made impossible the selection of an impartial jury",—the issue said by the Circuit Court to require more of a showing than the mere allegations of the petition (R. 331).

There exist the accepted tools of "Content Analysis" and "Opinion Analysis"; and there have been developed theorems and standards which make it possible to proceed, in a particular context, from a content analysis, to what public opinion effects are likely to be.

The unusual character of the subject matter involved is such that there happens to be available, for reference, studies that have actually been made, of the effect of mass media content on public opinion in the atom—atom spy area. This is set forth below at p. 12.

The next subdivisions of this Appendix present, in summary form, a study of the particular causative factors which research and study have recognized as having significance in translating "loaded" content into widely accepted ideas; that is to say, community prejudgments. There is also presented a study of the general social psychological framework, which is the basis of the effectiveness of particular causative factors. The objective validity of this "framework" and the validity in selection and description of the "particular causative factors" is illustrated by the summary of a field study that was made in respect of a subject, not unlike the present subject of study.

If the content of the media of mass communication, in a particular situation, is such as to bring into play several of the particular causative factors, in relation to a framework susceptible to the operation of such factors, it may be concluded that a situation will have been brought about where a defendant would have little or no hope for expecting "that one juror rather than another would be more likely to be influenced, consciously or unconsciously, by his preconceptions" regardless of whether the jurors "affirmed, in answer to inquiry by the trial judge, that they were prepared to determine [his] guilt or innocence solely on the

basis of evidence produced at the trial". *Delaney v. United States*, 199 F. (2d) 107, 116. Expert opinion then, would or should be admissible to show whether, in a given situation, the influence of "preconceptions as to probable guilt, engendered by pervasive pretrial publicity" (id. p. 113) is likely to be fatally prejudicial.

It is evident, moreover, that with or without the aid of relevant studies in the particular field which are herewith presented, a court which was familiar with the significance of the particular causative factors known to the science —particularly those denominated as "prestige-suggestion" "the majority-prestige effect" "selective perception and retention" and the others, would discern prima-facie evidence of probability of prejudice, in the exhibits tendered in the petition, at least to the extent required to make clear the necessity for granting a hearing. Moreover, realistic consideration of the general social-psychological framework, in particular, the recognized tendency to release fear-generated aggression against press-created stereotypes: the pattern known as "scapegoating",—would support the conclusion, in the context of the particular exhibits, that irretrievable prejudice was unavoidable.

## I. The Techniques

### A. *Content Analysis as an Established Science*

Judgment as to the probability of an effect on attitudes being created or reinforced by mass media cannot be made with accuracy by the layman. That the counsel for the defendants himself did not realize the extent to which such publicity may have had an effect is itself in part a function of this fact, and in part a function of the fact that not until such material has been assembled and its bulk and content perused could such a judgment reasonably be made. It is maintained that, just as the counsel for the defendants was unable at the time to judge the effects of the paper reports on community attitudes, it is impossible for the court to judge, without a hearing at which expert opinion is offered, that such effects may not have been operating.

The analysis of communications material[1] has during the past ten years developed into a field with special techniques and skills, which have been applied over and over again for manifold purposes. This field, usually called "Content Analysis", has enabled social psychologists to analyze, as Dr. Berelson puts it "the objective, systematic and quantitative description of the manifest content of communications" (Berelson, Content Analysis, Glencoe, Ill. 1952, p. 18). The rapid growth of the field may be in part illustrated by the fact that in the period from 1946-50 the number of content analyses published more than doubled the previous five-year period. In his book "Content Analysis", Dr. Berelson lists more than three hundred references in his bibliography.[2]

It is unnecessary to list here the various subject fields to which content analysis has been applied. It may, however, be pointed out, that in cases similar to the one under discussion, it has proved a valuable tool. One example of such usage is the study by Dr. Joseph Klapper and Dr. Charles Glock of Columbia University, published in the Scientific American 1949.[3] It is significant that the study was requested by six leading men in the physical sciences, attesting to the understanding that men who are themselves in the field of science have of the necessity for applying scientific techniques to determine the content of mass media, and their confidence in the methods of social psychology in analyzing and evaluating material of this order.

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[1] By this is meant simply the media of mass communication: newspapers of general circulation, radio, and television broadcasts.

[2] Free Press, Glencoe, Ill., 1952.

[3] The Bureau of Applied Social Research of Columbia University was asked by Scientific American and six eminent scientists to conduct a study of the press treatment of the *Condon* case. The scientists were: Harrison Brown and Harold C. Urey of the University of Chicago; Philip M. Morse of the Massachusetts Institute of Technology; George B. Pegram, Dean of the Columbia University Graduate Faculties; Charles Lauritsen of the California Institute of Technology, and John C. Warner of the Carnegie Institute of Technology. This "content analysis," in which the material is classified according to objective criteria and thus rendered susceptible of statistical description was published as TRIAL BY NEWSPAPER, by Joseph T. Klapper and Charles Y. Glock, Scientific American, 1949, Vol. 180, pp. 16-21.

The study referred to is, of course, just one of many that have applied the techniques of social psychology to a specific issue treated in the media. Studies of extended duration and broader scope and greater significance have also been conducted. For example, during the past war, content analysis was employed by several government agencies charged with responsibilities in the field of mass communication. In the Library of Congress was located the Experimental Division for the study of Wartime communications under the direction of Dr. Harold Lasswell of Yale University, whose purpose was to conduct a "World Attention Survey" through analysis of major newspapers. A similar project under foundation sponsorship was the Research Project on Totalitarian Communication under the direction of Dr. Ernst Kris and Dr. Hans Speier (presently with the Rand Corporation). The Media Division of the Office of War Information conducted content studies of the treatment given various war-related problems in newspapers, magazines, radio programs, newsreels and even the comic strips. One of the major applications of content analysis in Washington was made in the Analysis Division of the foreign Broadcast Intelligence Service (Federal Communications Commission) which prepared weekly and special reports on the broadcasts to this hemisphere from foreign countries.

Finally, the Organization and Propaganda Analysis Section of the Department of Justice employed content analysis techniques in its investigation of the propaganda output of various suspect organizations and individuals. In their attempt to establish a parallelism between such propaganda and the propaganda of enemy countries, the Justice Department took into court exhibits based upon content analysis and had them accepted as legal evidence requiring the testimony of experts. (References in this and preceding paragraph to Lasswell, propaganda detection and the courts, in Lasswell and Leits, the language of politics (Stewart, 1949).)

In addition, content analysis has been given commercial applications. For example, commercial content analysis is available from Press Intelligence Inc. in Washington, D. C. Fortune Magazine in 1944 sponsored a content analysis of

the labor press and General Motors Corporation employed content analysis in the "My Job Contest" reported in 1950 by GM's Research Director.

It is asserted that the material presented above, taken together, demonstrates that the judgment of the content of mass communications and their manifest import is indeed the province of the specialist. While laymen may make guesses this way or that about the effective content of a series of newspaper stories and headlines, techniques have been developed which make it possible to assess objectively the nature and magnitude of communication content relevant to a specific issue. Where important issues are at stake, it is the obligation of the courts to bring to bear on the problem the best opinion available, and the most advanced techniques known to science before passing judgment on a matter beyond the judgmental competence of the layman. Thus, it is held, that expert testimony is required, if a fair evaluation is to be made, as to the actual character of the content of the publicity before and during the trial.

### B. *Opinion Analysis as an Established Science*

If it were possible for the layman to decide, without the use of special techniques, what the given state of opinion is on a particular subject, it would ideed be unnecessary for the payment of millions of dollars to experts in order to find this out. Thus, the very existence of this branch of science urges the necessity of its employment in the case at hand. Counsel for the petitioners may state that the community attitude was indeed prejudicial and the prosecutor may argue that it was not. But only the trained expert can be trusted to advise on this issue. Lest it be thought that the estimation of the state of opinion on any issue is an easy matter for the layman to judge, it is of value to cite some of the investigations made by social psychologists to determine this fact. Several such investigations were conducted by Professor Travers,[4] then of Columbia University. Using students as subjects, he attempted to find out to what

[4] Archives of Psychology, 1943.

degree they were able to judge the opinions of others with whom they had been working. He concluded:

> "The errors in individual judgments of group opinion were very high, even concerning the group *with whom the subjects had been working* . . . Several judges expressed surprise when informed of the error they had made. Confidence which many feel in their ability to judge group opinion is largely unjustified."
>
> "The present study suggests that people should show more caution before asserting that the opinion of any group is either this or that, even in cases where there has been close contact between the individual and the group . . . people have not realized how difficult it is to make accurate judgments (regarding group opinion) just as thirty years ago they did not realize how difficult is the task of judging personality."

Travers went on to determine to what extent it was possible to estimate even the knowledge of a group, and here likewise he found individual judgment inadequate. Individual judgments of group knowledge, he finds, are highly unreliable and he urges that those, like educators, who need to know the state of knowledge of a group, refrain from relying on their own judgments but utilize appropriate techniques for such measurement.

In an even more compelling study by Professor Wallen of the University of Cincinnati, reported in 1943 in "Individual Estimates of Group Opinion," Vol. 17, P. 269 (1943), *Journal of Social Psychology*, the capacity of individuals in a small community to judge the state of opinion in that community was investigated. Asking the subjects to estimate the state of opinion in three questions of current concern, Dr. Wallen concludes:

> "In summary, we have found that in a small, well-knit college community, where a high degree of social interaction should favor accurate estimates of group opinion, considerable variability existed in such estimates . . .
>
> "Correlations between absolute errors made on the three estimates were so low as to lead to the conclusion

> that the individuals studied showed no tendency to maintain constant levels of accuracy or inaccuracy in their estimates."

While it may be freely admitted by the court that it is difficult, if not impossible, for the ordinary citizen to estimate public opinion on a given issue, they may feel further that it is not possible for the expert to do so. In spite of the vast research on attitude formation and change, in spite of the fact that every day in the year studies are undertaken to measure attitudes in some area by public opinion experts, the court may feel that the business of estimating public opinion is not a science and that the expert may be as wrong as the layman.

Among the ordinary public this view has recently received some impetus from the failure of the Polls to predict the 1948 election. This failure has provided a veritable field day for the critics of social psychology and led to all sorts of wild generalizations about the inaccuracy of attitude measurement methods. Interestingly enough, however, such a development has not taken place within the field, nor among the users of attitude measurement. Today, its use is more extensive than ever among those who are familiar with its methods. To hold that the techniques of estimating attitudes are not scientific because in one such situation they failed to work, is akin to claiming that there is no science of meteorology, if it rains when the weatherman forecasts sunshine.

Since the record of those engaged in attitude research is probably unknown to the court, it is worth quoting from Dr. George Gallup's report to the Iowa Conference on public opinion after the failure of his predictions and those of the other polls. Says Dr. Gallup:

> "The performance of sampling or cross sectional polls in the 1948 election should be viewed against the background performance recorded in the years since 1935 when polls were first established on a continuing basis.
>
> "During this period a total of 512 election forecasts were made by some twenty polling organizations

operating in twelve democracies of the world. In this country alone, a total of 446 forecasts have been made in this fourteen year period.

"The average error in these forecasts—including those made in the presidential election of 1948—is approximately four percentage points. In short, poll predictions based upon the vote for all parties have on the average varied from absolute accuracy by this average degree in elections not only dealing with candidates but those dealing with issues as well—referenda issues. The winners have been predicted correctly more than eight out of ten times."[5]

Since the accuracy of the techniques developed by social psychology for the measurement of attitudes is well established in the field, and because in probably no other field has human behavior been predicted with such a high degree of accuracy, the status of the field of attitude measurement has suffered no setback among professional users of attitude research because of its failure in the 1948 elections.

It is, of course, obvious that in the case at issue no such precise measurement is required as is the case in an election poll. Nor is it necessary to predict what attitudes *will be*, but merely to estimate what they *have been*. Needless to say, techniques which have been able to perform the harder task with the degree of accuracy described by Dr. Gallup, can certainly be presumed to be capable of performing the far simpler task of estimating the general climate at a given time in a particular community.

It may be argued by the court that such estimates cannot now be undertaken because we cannot conduct a survey to find out what people thought in 1950 and that consequently the foregoing arguments concerning the accuracy of public opinion techniques have little relevance to the situation. In order to dispel doubts as to the availability of data for experts to analyze, let it be stated at once that during the period in question, surveys of public attitudes were systematically taken by established research organizations in the ordinary course of their operations. Many of the ques-

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[5] *The Polls and Public Opinion*, Henry Holt, New York, 1948.

tions asked of the public have a bearing on the specific issues involved in this case. The American Institute of Public Opinion, the National Opinion Research Center, the Fortune Poll and the various regional polls have accumulated data which bear on the topic at hand. Some of these studies have not been published, and, as a consequence, data are not now available. But there is every reason to believe that the files of these organizations would be opened up for examination by qualified experts, if the court should declare that it was relevant for determination of the climate of opinion in the case at hand. Consideration of these data by qualified social psychologists would provide the court with an opportunity to determine whether indeed the attitudes of the community were of the order set forth in this petition.

In another section we have presented the theory of attitude formation and change accepted by present day psychologists. In so doing it has been our intention to focus the attention of the court on the complexity of the problem and the need to determine in the specific instance whether or not pre-conceptions held by the jurors must have affected critically their perception of evidence presented. The study of attitudes is indeed no area for the operation of the untrained. It is especially true of this field that those who for the purpose of their day-to-day operations have to measure public attitudes in a given area, turn to experts for the conduct of their operations.

### *The Uses of Public Opinion Research*

This report sets forth below some of the results of national public opinion polls taken during the period prior to that covered by Exhibits II-XV. This material makes a significant initial showing concerning the nature of the social climate in which the case occurred.

Published data from such research organizations as American Institute of Public Opinion and National Opinion Research Center do not include evidence for local communities, although the data exist in their files. Facts having bearing on the specific opinion climate of the New York City area are available in the files of these organizations,

and may be the subject of expert evaluation and interpretation.

That such public opinion research is considered authoritative, not only by scientists, but by business, industry, labor and government agencies (the government made particular widespread and significant use of this material during the war) is amply documented.[6]

### C. *Opinion Analyses in the 1945-1949 Period Which Have Significance*

The following material has been culled from the published public opinion data, and is presented as an indication of the developing climate of opinion before the Rosenberg trial.

To illustrate how poll data can be used to answer a question on the direction of change of public opinion, let us examine an analysis made of an earlier period of atomic development, that is up to 1948, on "Atomic energy or the atom bomb: a problem in the development of morale and opinion" (By Kay, L. W. and Gitlin, I. J., Vol. 29, *J. of Social Psychology,* p. 57 (1949).)

As evidence on the issue of whether there was an increase in fear of the atomic bomb (rather than enthusiasm for atomic research) the study sets forth:

> "An interesting group of questions has to do with whether the development of the atomic bomb was 'good' or 'bad'. In September, 1945, an American Institute of Public Opinion question:
>
> 'Do you think it was a good thing or a bad thing that the atomic bomb was developed?'

showed:

> 69% good.
> 17% bad.
> 14% no opinion.

---

[6] See Mildred Parten "Surveys, Polls & Samples" (Harper, 1950).

"By December of that year, when the same organization asked:

'Do you wish that the atomic bomb had never been discovered?'

52% "were glad it had been discovered."
34% "wished the discovery had not been made."
14% "expressed no opinion."

"In February, 1947, the National Opinion Research Center used this approach:

'In the long run, do you think people everywhere will be better off because somebody learned to split the atom?'

37% "thought people would be better off."
38% "thought people would be worse off."
6% said it would make no difference.
19% "didn't know" (p. 60-61).

The data above clearly reveals that fear of the atomic bomb increased sharply, during the period studied.

To turn now to the preliminary period, that is, leading up to the Fuchs arrest, we find evidence for the *rise* of anti-Communist feeling by examining the increase in those who favored registration with the Justice Department of all Communists. While in August 1948, 63% of the population held this view, by December 1949, the proportion in favor of the measure had risen to 77% according to surveys done by the American Institute of Public Opinion. By December, 1949 the anti-Communist feeling in this country was so strong that 68% of the population endorsed the idea that membership in the Communist Party "should be forbidden by law".

Likewise, the concept of Russia as an aggressive power out to "rule the world" was more and more coming into existence as the public image of that country. The proportion who felt that Russia was trying to build herself up as the ruling power of the world, rose from 58% in January 1946 to 70% in January 1950, according to the AIPO.

Given this popular feeling against Russia and Communism, it is apparent that there was an enormous initial

difficulty, prior and independent of the 1950-51 publicity which petitioners claim was prosecution-inspired, in obtaining a group of twelve citizens who would not see the charge against the petitioners in the light of these views.

It has likewise been maintained in this petition that the terrors of atomic warfare had caused a feeling of insecurity and uncertainty which rendered the public all the more susceptible to the effects of newspaper publicity on these issues. For example, in all surveys concerning the use of the atomic bomb, large majorities have indicated that they expected such an attack on the U. S. in case of war. According to a survey by the National Opinion Research Center of the University of Chicago, taken in October 1949, 77% of the population believed that A-bombs would be dropped on the U. S. in case of war, while only 12% felt that they would not be dropped.

The greater incidence of such fears in cities like New York is dramatically illustrated by an AIPO survey in December, 1950 which asked a national cross-section of the population whether they felt their *own community* would be subject to atomic attack in case of another war. Those who thought there was a "good chance" that their community would be attacked was 16% in small towns, 25% in small cities and 41% in cities over 100,000. The regression clearly indicates that if the figures for cities like New York were available, the proportion would be considerably higher than those cited.

The greater insecurity about atomic attack in New York is likewise indicated by the AIPO study in January, 1950 which asked the population if they "had given any thought as to whether you and your family would be in possible danger from a bomb attack in case of war." While in the non-coastal communities 53% said they "had thought about" this, in the coastal areas 63% gave this reply. In the face of this data, one wonders to what extent New Yorkers have been worried about such attacks, situated as they are in a coastal area in the largest city in the country. It would seem as though fears, insecurities and susceptibility to suggestion from authoritative sources about issues involving atomic war must have been greater in this city than anywhere else in the country, an atmosphere hardly

conducive to a a fair trial for persons accused of passing atomic secrets to Russia, even without the prosecutor-inspired pre-trial incitement said to have taken place here.

The influence of the media during the period from 1945-49 directing blame toward "atomic spies" is sharply illustrated in the comparison of certain findings in these years.

If we look back to a survey done in October, 1945 by the National Opinion Research Center, we find the following question asked:

> "Do you think that it will be possible for the U. S. to keep the secret (of the atomic bomb) permanently or will other countries find out for themselves how to make the bomb?"

In answer to this question, 83% of the population stated that they thought that other countries will find out for themselves how to make the bomb, 13% said that the U. S. could keep the secret permanently and 4% said they didn't know.

However, four years later (after the 1945-49 preliminary crop of "atomic spy" stories) we find that NORC, having asked the public if they believe Russia is now able to make the bomb, and finding that 65% believed that she could, then asked this group "How do you account for their being able to make it so soon?" In response, we find that 37% of the people blame "carelessness", "spies, and information leaks". This is the most frequent response given to the question. Thus, while a huge majority in 1945 *never had any doubts* that Russia would sooner or later learn how to make the bomb, their success is, four years later, attributed to "spies", etc.

Of course, it may be argued that the public never expected Russia would make the bomb *so soon*, and are blaming the spies for the speed of their success. This notion is dispelled by the 1945 survey which also asked "How long do you think it will be before they find out the secret—a year or two, five years, ten years or more?" Only *seventeen percent of the population thought it would take longer than five years, the vast majority feeling that other countries would have the secret in five years or less.*

Thus, it may be seen how the sensational publicity about atomic spies has succeeded in changing the public's mind about the secrecy of atomic information. If the vast majority of the public expected other countries to find out the secret within five years, how then, four years later, could so many fasten the blame on "spies and information leaks"? The answer, it would seem, lies in the tremendous influence of the media in levelling blame on so-called spies for Russia's success with atomic weapons development. An interesting example of how the mind of the public is unconsciously influenced by the press is afforded by another comparison of the 1945 data with the 1949 data. In 1949 NORC also asked respondents who thought that Russia now had the bomb: "Did you expect that they would learn to make it this quickly, or did you think it would take much longer?"

We have seen that in 1945 only *seventeen percent* of the population *thought* that it would take longer than five years. However, four years later, *some 43% of the population said that they had thought* it would take "much longer". Here, we submit, is a clear indication of the systematic indoctrination of the population with the notion that "atom spies" have been helping speed up the Russian bomb program. Although in 1945 the population was overwhelmingly of the opinion that other countries would have the secret within five years, by 1949, almost half say that they had expected it to take "much longer" and most frequently blame spies, etc. for the Russian success. Thus, the publicity about the atom spies has not only succeeded in affecting opinions but has managed to convince a good proportion of the people that they themselves had *expected* Russian success to take much longer, even though we *know* from empirical data that they had no such expectations.[7]

---

[7] Lest it be thought that two such surveys are not comparable because different people were interviewed, it has been long established that no matter *who is interviewed*, if the samples are equivalent the results are accurate within a few percentage points. It may be added that these two surveys used exactly the same methods and were conducted by the same organization, so the *reliability* of the data is unquestionable. Whatever deficiencies may have existed in one survey existed also in the other, and the comparability of the data is therefore in no way affected.

## II. The Theorems and Standards

### *Preliminary*

By research and experimentation, the science of social psychology has constantly sought to help bring about an understanding of how, among other things, the social attitudes and generally held opinions and prejudices encountered in society are developed. Sufficient data is available to establish that certain causative factors are particularly important in explaining the production of particular attitudes; the literature, moreover, shows that these special processes are more or less effective, dependent upon the general frame of reference of the community in which they operate. Furthermore, general studies of how the individual gets his ideas and values will show how the press tends to enforce conformity, particularly where, as in large cities, mass media are a substitute for personal experience; they also show how certain types of value judgments tend to create stereotypes; and in particular, in times of stress and uncertainty, self-preservative hostility facilitates the creation of scapegoats.

### A. *Particular Causative Factors*

Each of the following represents a particular type of causative factor which the expert will recognize as especially critical in the translation of media suggestion to mass acceptance. And each of the following, moreover, as is demonstrable from the Exhibits offered with the original motion to vacate the sentence, was brought into play in the pre-trial period on the Rosenberg-Sobell case.

#### i. *Prestige-Suggestion*

When a person is poorly informed in an area, and is presented with new material in that area, he becomes particularly susceptible to the effects of prestige; he will tend to accept the views provided by leaders, authorities, experts, officials, etc., particularly of leaders *in that area.* In music, the opinion of a symphony conductor will be influential; in a political matter, the statements of a govern-

ment official will be influential. A person who lacks first-hand knowledge needs to make new and contrary material meaningful in order to cope with it, and the suggestion made by the prestige personality becomes the anchor, or source of reference points. A citizen will follow his leader even when other sources of interpretation are available. As Krech and Crutchfield[8] explain, "The mental set toward the person making the suggestions may be of crucial significance and can evoke a need to agree even *before the suggestion is made* by the speaker." (p. 342)

The effectiveness of suggestion by prestige has been confirmed in numerous studies. H. B. Lewis,[9] in an experiment on the operation of prestige suggestion, concludes "When it was effective the suggestions usually operated to redefine an ambiguous situation. The subjects did not simply 'change their minds'. Rather the slogans they were judging appeared in a new light, acquiring a new meaning, and thus demanded a new judgment." The "prestige" of a suggestion, the source of it, functioned to *provide context for the statement.* It is often in terms of this *context that the statement had its meaning."*

T. E. Coffin[10] did a study on "Suggestibility and levels of difficulty" in which mathematical problems of graded difficulty were used with subjects with various mathematical backgrounds. He found, "Thus we may say that there is a tendency for suggestibility on problems to increase with the difficulty of the problems" . . . "both the number and percentage of suggestion-responses decreases with increasing years of training."

It is common knowledge that Mr. J. Edgar Hoover, for example, is widely regarded by virtue of his office and experience as the individual having the greatest "prestige

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[8] *Theory and Problems of Social Psychology,* Krech D. and Crutchfield, R.S.; McGraw Hill, 1948.

[9] From Studies in the Principles of Judgments and Attitudes, IV, The Operation of Prestige Suggestion. *J. of Social Psychology,* 1941, XIV, 229-256, cited by Newcombe, J. and Hartley, E. [p. 232-243].

[10] From T. E. Coffin, "Some conditions of suggestion and suggestibility", *Psychol. Monog.,* 1941, LIII, (4), cited in Newcombe, T. and Hartley, E., *Readings in Social Psychology.* Holt, Co., New York.

value" in the area of espionage activity, a subject on which the public is not generally informed or capable of securing first-hand information. In the light of this unusual significance attaches to the "release" by the Attorney General of Mr. Hoover's pre-trial conclusion as to the guilt of the petitioners (R. 161-3).

### ii. *The "Majority-Prestige" Effect*

The effects of group attitudes on the views of the individual have important application in the Rosenberg-Sobell case. The definite anti-Communist feeling in the community was *increasing* during the pre-trial and trial period, as has been shown above in the section on the Poll Data of that period. The type of pre-trial publicity initiated with the McGrath-Hoover press release was calculated to and did establish an initial, and continuing judgment of the overwhelming majority of the community that the petitioners, who had so authoritatively been declared to be guilty, must in fact be guilty. But even those who had not acquired a strong bias would tend to "go along with" the others, not necessarily from a deliberate "bandwagoning", but from a lack of insight into their own processes.

An influence upon the individual's judgment occurs when he knows, or believes he knows, the attitude which prevails in his *group*. The group opinion will then tend to suggest his own. T. E. Coffin[11] says, "The effectiveness of group opinion as compared with expert opinion appears also to depend on the issue being judged. The more closely the issue relates to 'social norms', the more influential the group opinion, while problems relating to 'personal norms' are less influenced by group judgments."

Asch, S. E., Block, H. and Hertzmann, M.[12-13] showed the effects of "majority prestige". Subjects were asked to rank ten professions for: intelligence required, social usefulness, conscientiousness, stability of character, and ideal-

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[11] Some conditions of suggestion and suggestibility, *Psychol. Monogr.*, 53 (4).

[12-13] Studies in the principles of judgments and attitudes; II. Determination of judgments by group and ego standards." *J. of Social Psychol.*, 12, 433-465.

ism. Group I, the control group, was given no suggestion; Group II were told that "500 students" ranked politics top; Group III were told that "500 students" ranked politics lowest; Group IV were told that "500 students" ranked politics top in social usefulness and lowest in intelligence required. The resultant ratings of politics is reproduced below (the smaller the number the higher the rating).

| Group | Average Ranking For Intelligence | For Social Usefulness |
|---|---|---|
| I | 8.1 | 8.2 |
| II | 4.1 | 4.1 |
| III | 9.1 | 8.5 |
| IV | 8.9 | 4.9 |

Despite the striking results above, (note particularly, Group IV, where the suggestion is able to raise one rating while lowering the other), when the subjects were interviewed after the experiment, most of them *denied influence by suggestion.* They were not lying but, the subjects were not aware of a change in their response.

In "The effects of group pressure upon the modification and distortion of judgments," S. E. Asch[14] studied the effect on individual judgment of group pressure toward perceptions *contrary to fact.* In a *clearly structured* situation, that is, matching the length of a line with one of three other unequal lines, the group of eight confederates were *coached* to make false judgments at pre-arranged points in the procedure. The subject, a ninth person in each group, would therefore be a minority if he judged correctly. It was found "There was a marked movement toward the majority. One third of all the estimates in the uncoached group were errors, and these were identical with or in the direction of the distorted estimates of the coached majority. The significance of this finding becomes striking in the light of the virtual absence of errors in the control group, the members of which recorded their estimates in writing."

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[14] In Readings in Social Psychology, Swanson G. Newcomb, T. and Hartley E. Holt, 1952, p. 2-11.

It was found that the distortions produced by the effects of the majority were of three types:

> "1—*Distortion of perception*—are not aware that their estimates have been displaced or distorted by the majority; these subjects report that they came to perceive the majority estimates as correct.
>
> 2—*Distortion of judgment*—subjects reach a decision that their perceptions are inaccurate, and that those of the majority are correct; these subjects suffer from primary doubt and lack of confidence; on this basis they feel a strong tendency to join the majority.
>
> 3—*Distortion of action*—these subjects suppress their observations and voice the majority position with the awareness of what they are doing." (p. 6-7)

Only the third type here can be regarded as lying in the situation, that is could be analogized to those few in the community who are *not* extremely anti-Communist in their attitudes, but voice what they observe to be the prevailing sentiments. The others are guilty of no such hypocrisy, but are genuinely unaware of how their views have been molded.

Asch concludes that "Independence and yielding are a joint function of the following:

(a) The character of the stimulus situation. Variations in *structural clarity* have a decisive effect; with diminishing clarity of the stimulus-conditions the majority effect increases.

(b) The character of the group forces. Individuals are highly sensitive to the structural qualities of group opposition. In particular we demonstrated the great importance of the factor of unanimity" (pp. 10-11).

### iii. *Labels as Providing Frames of Reference*

In the "trial by newspaper," which is reflected in Exhibits II-XV, many labels were applied to the defendants, such as Communist, red, foreign, Jew, radical, A-spy, and so on, any or all of which may have colored the jurors' perception of the evidence.

With regard to the use of labelling words, T. Newcomb says,[15]

> "The use of language has much to do with the perception of things in one frame of reference rather than another. The identification of a perceived object by means of a word may determine which of many possible frames of reference is supplied. For example, if you first hear John Doe referred to as a 'shady politician' you are apt to think of him quite differently than if he had first been referred to as a 'kind father' . . . Or individuals who are presented in an unfavorable light may be identified as foreigners, Negroes or Jews. The consequence is that individuals come to be judged according to the frame of reference associated with the label; a prejudice has been created . . . As Walter Lippmann long ago pointed out, we have many attitudes toward statesmen, government and peoples with which we have no direct contact at all. We judge them not as they are, obviously since we have no means of knowing all the 'facts.' We are dependent on second hand reports which come to us chiefly through the medium of words. If an event, particularly one which the individual has not observed himself, is first presented in terms of a given word it tends to be judged in the frame of reference called up by that word. Thus the attitude toward it may be quite different from what it would have been if a different word had been employed."

H. G. Birch,[16] in a study in which statements were labelled as Fascist, Communist, Reactionary, Liberal, stated with regard to the shifts in opinion produced by the labels.

> "On the basis of the results obtained it appears that the basic effect obtained by the application of a label to a given social position is the establishment of a given

[15] T. Newcomb, *Personality and Social Change*, N.Y., 1943, Dryden Press.

[16] H. G. Birch, "The effect of a socially disapproved labeling upon a well-structured attitude." *J. of Abnormal and Social Psychol.*, 1945, *40*, 301-310.

> initial direction of thinking. This set or tendency to approach a problem in terms of a given referential framework arouses selected stereotyped patterns of response available to the subject. The function of the label then is that of a stimulus which establishes the subjective matrix within which the objectively available materials are perceived" (p. 310).

Newcomb [17] cites the study by Professor Stanley Sargent of Barnard College in which he studied the words used by the Chicago Tribune and the effect of such words upon the readers of the newspaper. The results indicated that words used by the Tribune to describe policies and individuals which it disliked were words which were likewise disliked by the readers, *even when the words were taken out of context.* Newcomb points out that these words prepared the ground for unfavorable attitudes. In another part of his study Sargent compared the Tribune with the New York Times in the use of words to describe the same event. A close relationship was discovered between the words used by the newspaper and its attitude toward the issues. When subjects were again asked to give their attitudes toward the words (not knowing whence they were taken) again a correlation between the attitudes toward the words of the readers of the particular paper and the words used by the paper in expressing its own attitudes was demonstrated. Newcomb evaluates the results of the study as follows:

> "The conclusion to be drawn is not that these two papers were consciously attempting to influence public opinion favorably or unfavorably (on this point we have no evidence) but that the consequence of the use of such words was to arouse a readiness to respond favorably or unfavorably, regardless of the objects to which they applied."

In the light of the opinions expressed by the experts cited, it seems pertinent to ask what must have been the effect of the continual headline references to the petitioners as "atom spies", "red A-spy", "fleeting radar expert nabbed

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[17] *Op. cit.*

as A-spy", "passing atomic secrets to Russia", "plotting to feed secrets to Moscow" and the like.

iv. *Selective Perception and Retention*

It is by selective perception and retention that bias makes its effects felt in the trial itself. When the juror has a strong set in one direction and evidence, for and against, is put forth, material on one side will be seen as "less important", "less impressive", "less believable" or not seen at all, and thus not brought to bear upon the decision.

With regard to this problem Krech and Crutchfield [18] say,

> "Because perception is functionally selective, and because beliefs and attitudes play a role in determining the nature of this selectivity, new data physically available to an individual but contradictory to his beliefs and attitudes *may not even be perceived.*

Swanson, Newcomb, T., and Hartley, E. point out [19] that,

> "In a series of experimental studies beginning with the work of Bartlett, and carried on by a host of other investigators such as Margolis, Clark, Nodel, and Murphy, it has been consistently demonstrated that a person's perception and memory of materials shown to him are often distorted by his wishes, motives and attitudes."

Since many illustrations of this selectivity in perceiving have already been set forth elsewhere, only a few illustrative examples will be given here. O. Klineberg,[20] says in citing M. Zillig, "Einstellung Und Aussage," Ztschr. f. Psychol. 1928,

> [Zillig performed an experiment to see the extent to which a previously formed social attitude may distort the facts.]
>
> "In a preliminary survey of friendships within a classroom she (Zillig) discovered that certain children

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[18] *Op. cit.*

[19] *Readings in Social Psychology*, Holt & Co., New York, 1952.

[20] *Social Psychology*, Henry Holt and Co., 1940.

were almost universally liked, and others disliked to the same degree. In the experiment proper she took an equal number of pupils from these two extreme groups, and had them stand up in front of the class and perform calisthenic exercises under her direction. She had previously instructed the 'liked' children to make mistakes, and had trained the 'disliked' ones to follow her instructions exactly. At the end of the experiment she asked the class to indicate which group had done the exercises correctly, and the majority of the votes went to the popular group. It seems unlikely that the children designated the favored group as superior even though they saw them make the errors. Zillig believes on the basis of conversations with them that they actually 'saw' the differences as they reported them." (p. 206)

E. L. and R. E. Horowitz,[21] showed Southern children a picture of a fine home. When they were questioned later about the picture the children said that they "saw" a Negro woman engaged in some sort of domestic work, although this was *not* in the original. Klineberg (p. 207) notes that this is another example of how a stereotype determined a perception.

C. Goring[22] showed that because of the popular belief that intelligent people have high foreheads, those who were judged intelligent were also "seen" to have high brows, although actual measurement showed the reverse relationship to hold true.

W. Stern[23] undertook a series of experiments on the psychology of rumor and testimony, and found a lower number of errors in the reporting of what was actually seen or read. The observer was not aware of his errors, and even when he was willing to take an oath upon his evidence, errors both of omission and of distortion still occurred.

Thus, persons such as jurors in a case involving emotion-

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[21] "Development of Social Attitudes in Children," Sociometry, 1937-38, No. 1.

[22] *The English Convict.*

[23] Beitrage zur Psychologie der Aussage.

ally loaded issues tend to observe and to hear and to remember *not* what is presented, equally, from the contending sides, but selectively, in line with their pre-conception. Furthermore, this selective perception and retention occurs unconsciously.

### V. *Rigidity of Systems of Belief*

A presiding judge may caution a jury to disregard improper labels which have been introduced in the trial, he may urge the jurymen to exert themselves to be fair, and he may even warn them against some of the sources of bias. It is therefore pertinent to say a word on the question of whether it was even possible to dispel from the minds of the jurors the frames of reference which had already been established by publicity, so that they might consider the evidence on its own merits.

While it has been presumed by the laymen involved in the trial that such a phenomenon was indeed possible, evidence from Social Psychology would indicate that the opposite hypothesis would be the more reasonable one to be presumed. The wealth of studies on attempts to modify frames of reference and attitudes previously established, show that this is, indeed, a difficult task, especially where the attitudes of the individual are socially sanctioned, and express the prevailing view of the community. Moreover, if the attitudinal area is one in which the individual has no first hand knowledge, the setting of a frame of reference through communications material may so affect the perception of the "facts" presented that they cannot be viewed apart from this frame of reference. If prestige symbols are in some way attached to the opinions rendered or the frame of reference set, attempts to induce judgments based on information alone are probably doomed to failure. To cite some of the results obtained in attempts to modify entrenched attitudes, one such example is the classic study by Watson and Hartman of Columbia University who selected strongly religious and strongly anti-religious students and then subjected them to intensive propaganda of the opposite view, presenting the arguments of the other

side and the basis for the view held by the opposition.[24] These scientists say in their conclusion:

> "The experimenters ended with a marked sense of frustration. We had hoped to be able to demonstrate some effect of information *per se* (or of knowledge of the opponents reasoning) in bending a rigid set in one's religious outlook. One cause of man's faith in what is termed logic and scientific method lies in the belief that when all essential facts about a controversy are assembled these facts themselves will spontaneously point to one conclusion rather than another. In the face of such evidence, even the most powerful pre-dispositions presumably must yield. It seems, however, that most great issues are like ambiguous perceptual figures which permit more than one apprehension to emerge, or that the grand frames which encompass our mental life are restructured only when the organism experiences some powerful trauma. . . ."

In another study of the effects of propaganda Collier found that even when he trained students in the detection of propaganda through the analysis and discussion of specific propaganda items, these students were influenced by the propaganda they studied, in contrast to a control group who were not exposed to the material. Krech and Crutchfield [25] conclude from the Collier study that:

> "Thus it appears that even though people may be warned against propaganda, may spend time studying its characteristics, etc., their beliefs and attitudes can still be shaped by the propaganda if it fits in with existing frames of reference."

vi. *Summary: Probable Aggregate Incidence in Rosenberg-Sobell Case*

At the time of the pre-trial period of the Rosenberg case, there was a unique convergence of psychological circumstances, which so interacted as to produce an unusual pres-

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[24] *Journal of Abnormal Psychology*, 1939.

[25] See Krech and Crutchfield, *op. cit.*

sure situation on the community. These circumstances were (1) the effect of prestige pressures, provided by the public statements of government officials; (2) the effect of pressures toward increasing conformity to the group provided by the community-wide effect of public statements on this case and the prominence of certain other trials and investigations during the pre-trial period and the increasing level of anti-Communism in the community; and (3) the suggestiveness of the labels attached to the defendants by the communications media. This convergence of events, operating in a community beset by the special anxieties concomitant with the introduction and development of the Hydrogen bomb and the launching of a new Civilian Defense program oriented toward the possible imminence of atomic attack on New York, tended to produce in the Rosenberg jury the operation of (4) selective perception and selective retention, and established (5) a rigid mental set during the trial.

B. *Relevant Aspects of Susceptibility to Media Suggestion*

The effectiveness of the particular causative factors is enhanced by various conditioning circumstances.

An individual acquires *general* standards and views which become the frame of reference for his specific attitudes. The media of communication helps shape this general background.

The individual has a need to conform to his group, a need to find meaning in the world around him, and a need to channelize his emotional tensions. The media can determine the individual's *specific* attitudes under conditions in which the problem is unstructured, the individual has little first-hand experience with the issue, and is dependent on such second-hand sources of information.

The press in particular can shape the specific attitude by supplying this information in a colored manner, and by editorializing on the issue. Under these circumstances, the press creates over-simplified and over-generalized concepts, that is, *stereotypes*, which are accepted by the individual.

Under conditions of emotional stress, fear and anxieties cause hostility and aggressiveness. This hostility needs an outlet, and where the individual cannot find and attack the

true source of his problem, he will displace this hostility elsewhere. The individual, in so doing uses his available stereotypes as victims of scapegoating.

i. *Shaping ideas and values where first-hand information is lacking.*

Communication media are particularly effective as molders of opinion, (1) when the issue being dealt with is an unstructured one, with which the person has little or no direct experience, and (2) when the communication media are the only source of information as to an issue.

In his discussion of the kinds of issues on which media are likely to be most effective, Berelson says:

> "Communication content is more effective in influencing opinion on new and unstructured issues, i.e., those not particularly associated with existing attitude clusters. The closer the opinion situation is to a *tabula rasa* the easier it is for the communication media to write their own ticket." (In Schramm, Ed., Communication in Modern Society, Un. Ill. 1948, p. 176.)

The persuasive and controlling role of the media is emphasized by Dr. Wilbur Schramm, Director of Institute of Communications, U. of Ill. (Cloc. Cit.) The fact that communications "confer status and enforce social norms is so well accepted that I shall not develop it here. . . . It is chiefly a taking over by the mass media of functions that in the smaller community were carried out by direct experience. The citizen used to know the norms and the leaders because he saw them in action. Now the mass media have the power, by describing norms of social action to suggest that any deviation from them is abnormal and anti-social."

As to what occurs when the media are the exclusive source of information Dr. Bernard Berelson (in Schramm, Ed. Communication in Modern Society, University of Illinois, 1948) says,

> "This is of central importance; communication has effects upon converting opinion under conditions of

> monopoly which are much greater than its effects under conditions of competition." (p. 179)

Among the media, the newspaper, in its dual role of conveyor and interpretor of information, is in a uniquely powerful position to form and color attitude.

As Daniel Katz points out in (Annals of Academy of Political & Social Science, 1947)

> "In the world of social action, the newspaper has been the most important single medium in our culture for relating symbol to fact. In theory, the newspaper has a staff of trained observers and fact finders who constantly make contact with the real world to give accuracy to the symbols presented in the news columns. Though the newspaper has functioned surprisingly well, its limitations for fact finding are obvious. On many problems, research has shown that there is a wide discrepancy between the real world and the world of newsprint."

A. Note regarding *residual* effect.

The use of emotionally toned terms, and editorial comment, which indicate approval or disapproval of a person or policy, establish a residual feeling which long continues to influence the attitudes and biases of the readers. One example illustrating how this can be done is the study of A. D. Annis and Norman C. Meier [26] who "planted" in the daily student newspaper at the University of Iowa thirty carefully prepared editorials about W. M. Hughes, former Prime Minister of Australia. Half of the editorials were favorable, half unfavorable, to Hughes. Of the students who read the favorable editorials, 98% became favorably biased toward Hughes; of those who read the derogatory accounts, 86% became adversely disposed. Another test, four months later, revealed about the same views as the first test.

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[26] A.D. Annis and M. C. Meier, "The Induction of Opinion through Suggestion by Means of Planted Content," *J. Social Psychology* 1934, 5:65-81.

A strikingly important point has been made in many studies of racial bias and prejudice, where the standards of judgment of the person may be based potentially upon the prevailing stereotypes and prejudicial attitudes toward a minority group, despite their own personal experience and contact with members of a minority group which give facts contrary to the stereotypes. It is well stated by the conclusion of Profs. Gardner Murphy and Rensis Likert, Public Opinion and the Individual, (Harpers, 1938),

> "The individual acquires his prejudice against a minority group not primarily from contact with the minority group but from contact with the prevailing attitude toward that minority group."

ii. *Effect of Existence of Special Local Climate*

A study by T. M. Newcombe [27] illustrates the possibility of *local* climate differences with regard to a social issue. Evidence was presented to the effect that in two student communities characterized by opposed attitudes toward a recent social issue, different kinds of information relevant to that issue were acquired and retained, with the result that the relationship between attitude and information in the two communities was strikingly different.

> "The point that the writer would stress is simply that in *well defined* attitude climates certain determinants of information—probably the major ones—must be regarded as community engendered." The two communities "obviously differ as to the kinds of information made relatively inaccessible by the local attitude climate." (p. 300)
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> ". . . the process of acquiring and retaining information relevant to a controversial issue is dynamically related to the process by which an attitude toward it is acquired; that concern, usefulness, and opportunity operate as determinants of information; and that the manner in which these determinants operate is influ-

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[27] Newcombe, T. M. The Influence of Attitude Climate upon some determinants of information. J. ab. soc. Psychol., 1946, 41, 291-302.

enced by the uniformity, direction and intensity of the attitudes of other individuals in the community—i.e. by the local attitude climate." (p. 901)

The local climate engendered by these special circumstances in New York in this period may well have influenced the process of the acquisition of information relevant to the present.

As has been shown by the poll data referred to above, psychological sensitivity to fear of the atom bomb was greater in metropolitan areas. [Evidence on whether it was particularly effective in New York would be available in the local break-down of this data.]

Among the exhibits tendered by the petitioners were such as VIII-A-27 "City Folks Fear of Bombs aids Boom in Rural Realty." and III-F-5 "Doom of 27 U. S. Cities by H-Bombs Envisioned . . . Physicist warns of Surprise Raid—New York in 'hopeless' category."

> "If Soviets Start War Atomic Bomb Attack Expected on New York First." Jan. 8, 1951 p.'e. (Ex XIII-E-1). "When Russians Strike It Will Be With Plenty of A-Bombs on New York and Washington, D. C." N. Y. Daily News, July 1, 1950. p. 3.

These stories, in the metropolitan press, focussing as they do upon New Yorkers as the victims of this imminent attack, create a higher level of fear in the New York community than elsewhere. The material in the exhibits, from these newspapers, which demonstrate the potential effects of the atom bomb, use as their model (including maps of imaginary devastation) the city of New York or the cities of New York and Washington, D. C.

That such pronouncements had been effective in producing anxiety is reflected by the press itself by such news stories as [Ex VIII-A-28] "War Perils Start Wave of Anxieties." Fears and anxieties are disruptors of critical ability, and an anxious community is susceptible to suggestive rather than structural, attitude formation.

iii. *Special Effect of Creating Stereotypes*

In Newcomb, T. and Hartly, E. Readings in Social Psychology, Holt & Co., N. Y., Lazarsfeld and Merton, point out:

> "Complexities generally inhibit mass action; public issues must be defined in simple alternatives, in terms of black and white, to permit or organized public action . . . the commercially sponsored mass media indirectly but effectively restrain the cogent development of a genuinely critical outlook." p. 80

Walter Lippman first used the word stereotype to apply to this tendency to classify persons as cartoon-like figures. Once a stereotype is embedded in the attitudinal structure of a person (juror), mere contrary information has little effect in dislodging it; and it consequently exerts a controlling effect on specific judgments and perceptions of the group.

[The crucial reference points of these jurors include certain stereotyped attitudes and values which are also the essential items at issue in this trial. The attitudes are reflected in the picture presented by the press in convincing unanimity.]

The picture of the defendants, in the minds of the jurors, has them labeled with the negative stereotypes, the prejudices of the media. There is uniformly expressed the need for prosecuting the cold war; the need for secrecy in our plans and production, the necessity for security and "loyalty" regulations, the imperative for building up atomic strength. On the other side, the news reports and organs of opinion formation stress the villain as the Communist menace; that the U. S. S. R. is the enemy state, that American communist party members are agents of a foreign power, with their loyalty to Moscow, under direction from there, and are trained at infiltrating and subverting and espionage and plotting and conspiring. The accused individuals are pictured by the prosecution, as in advance of the trial, as horrifying creatures who conform to these negative stereotypes. What was thus brought into play

was tersely summarized by Professor Clyde Miller, The Process of Persuasion, Crown. Pub. N.Y. 1946, "Self-preservation is persuasion's first law." [p. 24]

iv. *Stress and Anxiety as Productive of "Scapegoating"*

The pre-trial period was a time of great stress. The attitudes and prejudices, the uncertainties and bewilderment of persons confronted with a demand for decision, produce vague but tremendous fears and anxieties which develop attitudes of defensive hostility and aggressiveness. This is the pattern of scapegoating, so well formulated by Gordon Allport and Henry Murray and their seminar at Harvard (published as the widely-used A.B.C.s of Scapegoating by the Chicago Y.M.C.A.). It is so applicable to the present case, that it is set forth here in abbreviated form.

Scapegoating may be defined as: a phenomenon wherein some of the aggressive energies of a person or group are focused upon another individual, group or object; the amount of aggression and blame being either partly or wholly unwarranted. Psychologically, we must recognize that scapegoating grows out of normal attitudes, normal biases, and ordinary prejudices. It is under the severe impact of unusual frustration and hardship, misinterpreted through primitive reasoning, that the excesses of scapegoating occur.

The motives and mechanics for scapegoating are (a) fear and anxiety (b) conformity and (c) tabloid thinking.

(A) *Fear* is an actual feeling of danger and dread. It may be reduced or dispelled by a preventive attack on what is considered to be the threat. Often in times of fear, we do not distinguish between real and pseudo-threats. For example: Our fear of spies and saboteurs leads us to be unduly suspicious of *all* foreigners and of innocent minority groups. During the war, for many months all—not some—of the Pacific Coast Japanese-Americans were held in internment camps. *Anxiety* is anticipation of danger. Like fear it represents feelings of insecurity. It can be alleviated by rationalizations which take the form of scapegoating. During a war or a "cold war" fears and anxieties are preva-

lent: we vaguely fear air-attacks; we are anxious for the safety of those at the front. To help explain these jitters we may invent absurb menaces which, though fantastic, seen definite and credible. For example, we listen to tales of a Negro uprising or a Jewish plot.

(B) *Conformity* makes for security. If everyone around us is given to scapegoating, and particularly those we value highly, then only by imitating their actions can we be fully accepted in the group whose approval we desire. For example: Under the Nazi regime, many Germans scapegoated the Jews to establish themselves as acceptable Nazis and thus avoid persecution for themselves.

(C) *Tabloid Thinking* involves the pursuit of meaning. War or cold war bring out in fearful vividness the helplessness which the individual feels in the face of the world-wide forces. Simplification of issues is sought in order to make possible some understanding of this social chaos. It is less trouble to think of the munitions makers as responsible for war, than to figure out its complex economic and cultural causes. Simplification of issues provides for economy of energy; if a person feels hostile and aggressive it is more economical for him to attack one single obstacle in his path than to diffuse his aggressive impulses. Sometimes the issue may be more simplified by blaming a group or class or people rather than specific individuals.

All these motives may create a pattern of aggression against someone who comes to be reputed to be guilty. But in most cases the aggression is "displaced." The actual guilt or innocence of the victim, the fact that he may not have been tried or confronted with evidence against him is irrelevant. The victim of scapegoating is chosen for attack for several reasons. (1) The victim has *distinguishing, salient characteristics.* He is easily identified; he has "high visibility." In particular, any behavior which sems to imply a transgression of the moral code is an active source of scapegoating. (2) The victim has little *possibility for retaliation.* (3) The victim is *accessible.* (4) The victim has been a *previous object of blame:* there is latent hostility against him, though he may be quite guiltless in the present instance. (5) The victim can *personify* an idea or a

group which we want to attack. In old Salem the witches personified the devil. In 1917 individual German-Americans were abused in America because of hatred toward the Kaiser and his armies.

v. *(Summary:) High susceptibility in Rosenberg-Sobell case*

Prior to the advent of the Rosenberg-Sobell case, the community had acquired a frame of reference, shaped by the advent of the cold-war, as presented by media coverage. From the need for in-group feeling, and the general cold-war jitters, the community became susceptible to suggestive indoctrination by the press.

During the pre-trial period, the media coverage of the case was so inflammatory, and the coverage of issues which the press associated with the case were so negative and intensive, that stereotypes were created for the community. The media had a virtual monopoly as source of information in these areas, since almost no one had the first-hand knowledge with which to *structure* an attitude. The attitude thus created was a product of suggestion rather than structuration. The Rosenbergs became the scapegoats for the community's hostility. During the trial, the jurors, who were drawn from this community most subjected to this press coverage and most threatened by the imminence of atomic attack contained therein, held attitudes containing negative stereotypes; which attitudes were therefore not readily susceptible of modification by rational evaluation of the evidence.

Members of the jury are of course representative of the general population, and as such have the beliefs and opinions, the attitudes which typify our culture. The jury in this case is, in part, unwittingly selected in this respect. Whereas the total group of selectmen may conceivably contain an actual random sample of the jury district's adult population, as to occupation, race, religion, sex, income, and range of political beliefs and attitudes, the selection of the specific jurors involves the exclusion and dismissal from the panel of those persons with any extreme or a-typical views in either direction; this tends to eliminate from the

jury those exceptional individuals who may have been resistant to the suggestive pressures of the media.

In the present situation, the jurors have probably never met a Russian Communist, an American Communist, nor a spy; and it seems extremely unlikely that the statements of the prosecuting officials to the press that the petitioners were atom spies, communists and of Russian Polish origin could have failed to set up a prejudicial frame of reference which critically affected their perception of the acts and intentions of the petitioners as presented and implied in the trial. Therefore, in the jurors' thinking the stereotyping created by the hostile climate have been operative.

Not only was a pre-disposition hostile to the defendants created by the media, but also evidence in their favor presented at the trial could not have done much to change the minds of the jurors. As Dr. Bernard Berelson strikingly makes the point (Communication in Modern Society, University of Illinois, 1948):

> "What may or may not be clear, however, is that the strongly predisposed on an issue actually manage not only to avoid contrary communication material so that it just does not come to their attention but also that they manage to misunderstand the material (which objectively is straightforward) when confronted by it. . . . Prejudiced people find several ways in which to evade the message of pro-tolerance propaganda; they avoid the intended identifications, they invalidate the message, they change the frame of reference, they 'just don't get it.' "

C. *Comparative study of the validity of the theorems and standards: "Invasion from Mars"*

In the assessment of the conditions under which media may strongly affect public attitudes, social psychologists have rarely had the opportunity to utilize empirical data occurring in a "real live situation." Most of the data accumulated experimentally has resulted from laboratory studies. It is for this reason that those few cases in which effects of the media have been clear and demonstrable have been carefully studied. As in any science, observation of

the process in its "purest" state provides the optimal conditions for its analysis.

Thus, the public reaction to Orson Welles' broadcast "The Invasion from Mars" has been most carefully investigated by social psychologists. Here we have a situation where the public reaction was immediate and direct and the reaction itself extreme. By studying this "pure" case it becomes possible to learn what the conditions are which make for maximum public suggestibility, which makes a public susceptible to the media. The principles which may be drawn from an examination of this unambiguous case history of media affect on attitude may help illustrate some general principles of how such effects operate under ordinary conditions.

The petitioners have claimed that the susceptibility of the community to stories about atom spies and the like is in part a product of the general state of world affairs, and that this deterioration of relations between Russia and the United States and the fear of an atomic war set up conditions especially conducive to the acceptance of the pre-trial "advertising" of the claim of the petitioners' guilt.

The actual state of world affairs is an important factor in determining the effects of mass media is no mere idea invented by the defense for this particular situation. Social psychologists have made this point with great emphasis and it is nowhere better illustrated than in Cantril's discussion of the reaction of the public to "Invasion from Mars" broadcast.[28] It will be remembered that the broadcast caused widespread panic in many places—a reaction which seemed to observers quite disproportionate to the situation. In Cantril's analysis of the reactions to the broadcast, in which many of the persons who participated in the panic were interviewed, he offers as a partial explanation for the extremity of the response the following:

> "This broadcast occurred in the fall of 1938 when vast numbers of the population were unusually bewildered

[28] All references are to *The Invasion from Mars, A Study in the Psychology of Panic* by Hadley Cantril, with the assistance of Hazel Gaudet and Herta Herzog, published by Princeton University Press, 1940.

> by the prolonged economic insecurity they had experienced and by the precarious and delicate state of world affairs following the Munich stalemate. In commenting on the panic Heywood Broun tersely and aptly summarized the effect of general social and political unrest by saying that 'the jitters have come home to roost.' Current norms were somehow proving inadequate to account for objective conditions, the whole course of recent history having created a relatively ambiguous and unstructured situation conducive to high suggestibility."

It is most significant that one radio broadcast was able to trigger large numbers of people into a panic reaction because of the general social insecurity. The same general phenomenon operated in the case at issue. The fear of war and atomic invasion have been so much a part of the environment of the average American that, it would seem quite likely, as in the case cited by Cantril, that a high degree of suggestibility was created.

At 8:00 p.m., Sunday night, October 30, 1938, Orson Welles Mercury Theatre presented a modernized version of H. G. Wells' story *The War of the Worlds.* The radio script's version of the story of the invasion of Martians used New Jersey as its locale, and made specific mention of many familiar localities. The radio play produced great panic; people fled the area, sought shelter, tied up phone communications, etc. One week after the broadcast a program of detailed interviews of a sample of subjects in the New Jersey area was instituted, under the sponsorship of the Federal Radio Education Committee, by virtue of a grant from the Rockefeller Foundation to Princeton University, and a special grant, after the broadcast, by the General Education Board. Six weeks after the broadcast a nation-wide sample of several thousand adults was conducted by the American Institute of Public Opinion (the Gallup survey). The Columbia Broadcasting System conducted their own nation-wide interviews during the week after the broadcast. The results of all these are incorporated in the Cantril analysis.

The results of this study shed light on the problem of the effects of mass media upon the community and therefore is pertinent to the problem of the condition of the community from which the jurors in the Rosenberg-Sobell case were drawn. The study showed (a) that the *threat* to personal safety created by the stimulating broadcast acted upon the suggestibility of the community, so that the population showed wide-spread lack of, or *suspension* of, critical ability, (b) that the greatest *susceptibility* occurred in the area which was presented as being under immediate attack (c) that among the chief causes of the effectiveness of the stimulating broadcast was the *prestige* of the supposed speakers and the war scare in Europe. These points, as they apply to the Rosenberg-Sobell Case, will therefore be set forth in order.

(a) *The Threat to Personal Safety Created by the Stimulating Broadcast Acted upon the Suggestibility of the Community, so that the Population Showed Wide-spread Lack of, or Suspension of, Critical Ability*

In the 1938 panic the apparent threat to life and safety came from an extra-planetary invasion described for less than one hour on one radio station, heard by, at best estimate, 6,000,000 listeners. According to the AIPO survey, 28% believed the broadcast to be a genuine news bulletin, and "seventy percent of those who thought they were listening to a news report were frightened or disturbed. This would mean that about 1,700,000 heard the broadcast as a news bulletin and that about 1,200,000 were excited by it." [p. 58] On the general reluctance of people to admit, under questioning, to being credulous, influenced, etc., Prof. Cantril comments "It must be remembered that the number of persons who admitted their fright to the AIPO interviewers is probably the very minimum of the total number actually frightened. Many persons were probably too ashamed of the gullibility to confess it in a cursory interview. [p. 58]

This single, brief and unreal event produced such wide-spread fear and such severe anxiety, that it continued for days, and even weeks after the event; this is shown by the respondents who reported that they were sick for days

afterward, and by the barrage of mail received by the radio stations and the Federal Communications Commission.

Since, during the pre-trial period of the Rosenberg case, the sources of fear were the threats to life and safety stated by the numerous stories in press, radio and television of the dangers of the atom bomb, reiterated and confirmed daily, the extent of fear in the community can only be estimated, but, being more realistic and wide-spread in its sources, must have been many times greater than that demonstrated in this peculiar panic. In the case of "The Invasion From Mars", a large proportion of the listening population were able to withstand the experience critically by reference to reality; it was only necessary to turn the radio dial or look around to discover that the world was as before. Even so, many whom Cantril regards as "susceptible" to suggestion, continued to respond to the impact of the threat despite the contradictions of reality. For example:

". . . I went to the window and looked over to New York. *I didn't see anything unusual there either, so I thought they hadn't gotten there yet.*"; and

"*We looked out of the window and Wyoming Avenue was black with cars. People were rushing away, I figured.*", and

"No cars came down by street. '*Traffic is jammed on account of the roads being destroyed,' I thought.*" (Emphases are those of Cantril, p. 93)

It is of major importance to note that once these interviewees were convinced that the report was *news*, they interpreted *whatever* factual situation confronted them as confirmation of their belief. They explained away or tied in any fact to justify their belief. It did not matter whether the traffic was thin or thick, usual or unusual.

Once a potential juror is told by those whom he looks upon as having authority and prestige that particular individuals are Communists and spies, then *any* facts about them will be woven into the fabric of this belief.

(b) *The Greatest Susceptibility Occurred in the Area Which Was Presented as Being under Immediate Attack*

During "The Invasion from Mars" the degree of fright was directly related to the location of the person listening with regard to the fictitious scene of invasion. "Two-thirds of the persons interviewed in this study who lived in the immediate vicinity of the invasion [New York, New Jersey and Pennsylvania] were frightened; 60 per cent of persons not in the immediate locality but within 500 miles of it, 57 per cent of those within a 1000-mile radius and 53 per cent of those within a 2000-mile radius were frightened." [p. 147] It is to be expected that stories emphasizing New York as the possible target for atomic attack would similarly be most frightening to residents of New York City.

The imminent possibility of atomic attack was felt particularly in the New York area during the 1950-51 period because: (1) The stories in the New York City newspapers stressed the possible effects of an atomic bombing on New York (cite Ex. IX, A-2, 3; Ex. VIII, D-7; Ex. II, E-8; Ex. III, E-2); (2) During the period in question the Korean war had begun and on July 10, 1950 a recruitment of volunteers for civilian defense in New York was carried out; (3) As an aspect of the Civilian Defense program the city was demarcated with regard to shelter areas; (4) A program of dog-tagging the school children of New York was initiated and carried through, and air-raid drills were instituted in the New York schools for the first time.

Since these events could impinge on (1) newspaper readers, (2) radio and TV listeners (Radio Civilian Defense), (3) members of the population literate enough to read Shelter and instruction signs, and (4) parents and other relatives of school age children, no significant segment of the population of the New York area, from which the Rosenberg-Sobell jury was drawn, could have remained ignorant of the fact that government and other authoritative sources regarded the city of New York as being under danger of attack by atom bomb.

(c) *Among the Chief Causes of the Effectiveness of the Broadcast Was the Prestige of the Supposed Speakers and the War Scare*

After "The Invasion From Mars" fright, respondents to interview indicated that the importance and authority of the (imaginary) experts had convinced them of the reality of the danger and influenced their course of action. In the play the authority figures were scientists and professors, Army General, commander of the State Militia at Trenton, Vice-President of the Red Cross, Captain of the Signal Corps, and Secretary of the Interior (all fictitious). Cantril says of these effects, "It is a well known fact to the social psychologist, the advertiser, and the propogandist that an idea or product has a better chance of being accepted if it can be endorsed by, or if it emanates from, some well known person whose character, ability, or status is highly valued. The effect of this prestige suggestion is especially great when an individual himself has no standard of judgment by means of which he can interpret or give meaning to a particular situation that confronts him and when he needs or is interested in making a judgment or finding a meaning. The fantastic events reported by the announcers in this broadcast were far removed from ordinary experience; yet they were of such great potential and personal threat to the listener that he was both bewildered and in need of some standard of judgment. As in many situations where events and ideas are so complicated or far removed from one's own immediate everyday experience that only the expert can really understand them, here, too, the layman was forced to rely on the expert for his interpretation." (p. 70-71). In the present case certainly J. Edgar Hoover is a "well known person whose character, ability or status is highly valued"; this gives his statement a good chance of being accepted by persons to whom the recruitment of "espionage information and agents" is far removed from personal every day experience. The same could be said of Mr. Irving Saypol, then U. S. Attorney for the District, and his statements (R. 50) and Representative Carl Mundt's statement (R. 51) and, of course, President Truman's statement (R. 50),

At the period of the "Invasion from Mars" the insecurity created by the war scare in Europe was a product of the crisis in Czechoslovakia that year. During the pre-trial period in the Rosenberg case there were many indications of danger of spreading of the Korean War which created a comparable feeling of insecurity.

The community of the Southern District having been subjected to an unusual pre-trial publicity, and being especially threatened by A-bomb attack, and lacking direct realistic experience of such attack, were then susceptible to the effects of prestige suggestion as to the dangers of such attack, as to the dangers of atomic espionage, as to the espionage-like character of Communists and to the relation of the Rosenberg-Sobell case to all previous and current atom and/or experience cases and events. Under these conditions it is doubtful that any considerable portion of the potential jurors could withstand the effects of the publicity during this period.

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Depicted, then, in the foregoing material are not only the tools and techniques of an established science—"content analysis" and "opinion analysis", but also its theorems and standards of evaluation. What seems evident is not merely that expert assistance can be appropriate and meaningful in analyzing content and in *evaluating the probable impact of the content in a particular social framework*, enough appears from the foregoing to make it possible to assert that the application, by a court, of the standards of evaluation that have been scientifically developed, would justify, if not require, the conclusion that petitioners were put into a position where their trial was "but a legal gesture to register a verdict dictated by popular preconception", and hence, not a "trial" at all, in the Constitutional sense.